

Wednesday. I made promises, in effect, to Senators PRESSLER and HOLLINGS that we would take it up. I am not certain we will even have five amendments offered. This is a bill the President wants very much. It would seem to me, on the other side, if they have 20 amendments, maybe they would be willing to forgo offering all those on this bill unless they relate to this bill or toughen this bill or somehow strengthen this bill.

It is important legislation, there is no question about it. Nobody knows how important it is any more than the Presiding Officer, Senator INHOFE, and Senator NICKLES, from Oklahoma. We want to look back on it a year from now and say we did the right thing, we just did not do something in the emotion of the moment that might infringe on somebody's constitutional rights a year from now or 10 years from now.

But I think there is basic agreement. As I just listen to the two managers here it seems to me Senator BIDEN and Senator HATCH have a pretty good grip on what they would like to accomplish. Hopefully we will work together tomorrow. Maybe we can get it done tomorrow night, late.

We did not quite get it done on Memorial Day but at least we made the effort. There is no way you can complete it with 97 amendments out there, 67 on that side and 30-some on this side. So we have it down to a total of 20. Maybe some of those are not—I do not say they are not serious amendments—maybe what we call around here, place holders.

It seems to me if we start fairly early tomorrow morning we can complete action on the bill tomorrow night.

Mr. BIDEN. I hope so.

Mr. DOLE. Is that possible?

Mr. BIDEN. Mr. President, I think that is true. Again, I do not think we are going to have trouble finishing the amendments. I think the outcome of the amendments may affect what one or two people on your side or one or two people on my side might end up doing. But my guess there as well is if we finish these amendments we will go to final passage and there will not be much in the way of that. But I cannot make a promise to the leader on that.

Mr. DOLE. Is there anything else to do this evening? Any other amendments that can be dealt with?

Mr. HATCH. I think it is better for us this evening to work on what we are going to do tomorrow, come in early and do our very best to finish this by tomorrow night. I really appreciate the good will on the part of the minority here to work with us and get this done. But I would like to finish it by tomorrow night if we can. If it means getting into the habeas amendments pretty early tomorrow, it means getting into the difficult amendments.

Hopefully, once we resolve those one way or the other, we can move ahead to final passage.

Mrs. BOXER. Will the Senator yield for a question? Shall the Senator be

here prepared at 9:45 to offer the amendment? Can we perhaps incorporate that into a unanimous consent so we can make sure it is the business at hand?

Mr. BIDEN. Mr. President, I ask unanimous consent the first amendment tomorrow be the amendment of the Senator from California, Senator BOXER.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. I thank my colleague.

Mr. HATCH. I suggest to my distinguished colleague from California, if she will work with us on the amendment it might not be as difficult as it might be. So I would like to chat with her and see what we can do.

Mrs. BOXER. I will be glad to do that.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### EXTENDED USE OF MEDICARE SELECTED POLICIES

Mr. LOTT. Mr. President, I ask that the Chair lay before the Senate a message from the House on H.R. 483, the Medicare select bill.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H.R. 483) to amend title XVIII of the Social Security Act to permit Medicare select policies to be offered in all States, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. LOTT. Mr. President, I move the Senate insist on the Senate amendment and agree to a conference on the disagreeing votes of the two Houses and the Chair be authorized to appoint conferees.

The motion was agreed to; and the Presiding Officer appointed Mr. PACKWOOD, Mr. DOLE, and Mr. MOYNIHAN conferees on the part of the Senate.

Mr. LOTT. Mr. President, I would like to note that this has been cleared with the leadership on the other side of the aisle. I do have a unanimous-consent request now.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages

from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MEASURES PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calendar:

H.R. 1045. An Act to amend the Goals 2000: Educate America Act to eliminate the National Education Standards and Improvement Council, and for other purposes.

#### REPORTS OF COMMITTEE

The following reports of committee were submitted:

By Mr. ROTH, from the Committee on Governmental Affairs: Special report entitled "Fourth Interim Report on United States Government Efforts to Combat Fraud and Abuse in the Insurance Industry: Problems in Blue Cross/Blue Shield Plans in West Virginia, Maryland, Washington, DC, New York, and Federal Contracts" (Rept. 104-93).

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. ROTH, from the Committee on Governmental Affairs:

Robert F. Rider, of Delaware, to be a Governor of the United States Postal Service for the term expiring December 8, 2004.

(The above nomination was reported with the recommendation that he be confirmed.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DASCHLE:

S. 879. A bill to amend the Wild and Scenic Rivers Act to limit acquisition of land on the 39-mile headwaters segment of the Missouri River, Nebraska and South Dakota, designated as recreational river, to acquisition from willing sellers; to the Committee on Energy and Natural Resources.

By Mrs. HUTCHISON:

S. 880. A bill to enhance fairness in compensating owners of patents used by the United States; to the Committee on the Judiciary.

By Mr. PRYOR (for himself and Mr. GRASSLEY):

S. 881. A bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes; to the Committee on Finance.

By Mr. PRESSLER (for himself and Mr. DASCHLE):

S. 882. A bill to designate the Federal building at 1314 LeMay Boulevard, Ellsworth Air Force Base, South Dakota, as the "Cartney Koch McRaven Child Development Center," and for other purposes; to the Committee on Environment and Public Works.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SPECTER (for himself and Mr. INHOFE):

S. Res. 128. A resolution prohibiting the use of United States Ground Forces in Bosnia-Herzegovina; to the Committee on Foreign Relations.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON:

S. 880. A bill to enhance fairness in compensating owners of patents used by the United States; to the Committee on the Judiciary.

##### LEGISLATION ENHANCING FAIRNESS IN THE COMPENSATION OF PATENT OWNERS

Mrs. HUTCHISON. Mr. President, I am introducing a bill today to provide fairness to our Nation's inventors. As the law is now written, inventors whose patents are taken for use by the Federal Government have only one recourse to obtain compensation—they are compelled by statute to bring a lawsuit against the Government. Under court interpretations, they are forced to bear all costs of the lawsuit, even when they win their case. This bill would permit patent holders whose claims are upheld to be reimbursed, as well, for their reasonable costs.

In 1982, when the U.S. Claims Court was created, the Congress made significant improvements in the existing law concerning claims against the Government. It did not, however, give consideration to the fairness of the existing statutes that require payment of compensation to persons whose patent rights are taken for national defense or other purposes. The Congress simply carried over the existing provisions of section 1498(a) of title 28, requiring "reasonable and entire compensation" for the taking of patent rights. Those provisions—fair on the surface—dated from the time of World War I. In the years since World War I, however, the statutory language has been applied by the courts in a manner that produces a serious inequity.

The problem arises most frequently in cases involving an inventor whose rights have been infringed by a defense contractor. In such a case, the statute provides that the inventor's only remedy is an action in the U.S. Claims Court against the Government—the beneficiary of the defense contractor's infringement—on the theory that, indirectly, the Government has taken the patent rights for public use.

The Government is authorized to take private property, for the benefit of the public, under the power of "emi-

nent domain." It may do so, however, only upon paying the "just compensation" required by the fifth amendment to the Constitution. The principle applies to the taking of intellectual property—like patents—as well as tangible property. Statutory application of this principle to the taking of patent rights is found in the part of section 1498(a) of Title 28 that provides:

Whenever an invention . . . covered by a patent . . . is used . . . by . . . the United States without a license of the owner . . . the owner's remedy shall be by action against the United States in the United States Claims Court for the recovery of his reasonable and entire compensation for such use. . . .

It might logically be supposed that the constitutional requirements of "just compensation" and the statutory requirements of "reasonable and entire compensation" would assure that an inventor will not suffer a loss when the Government takes his invention for public use. Unfortunately, logic and practice do not always keep pace with one another. The inventor does suffer loss—the costs of his lawsuit—and that loss can be significant.

The current situation may be summarized as follows: In order to obtain any compensation at all under section 1498, an inventor must initiate a lawsuit against the Government. After succeeding in such a suit, he becomes entitled to receive "reasonable and entire compensation." But the inventor then finds that, under current court interpretations, he cannot recover any of the expenses, including the witnesses' travel costs and reasonable attorneys' fees, that he incurred as a result of having to pursue the civil action. The expenses are, in effect, deducted from that sum established to be fair compensation. In short, Government requires the victim of its taking to sue to recover his losses, forces him personally to bear all his costs in undertaking the suit, and leaves him with compensation that represents less than the true value of the property taken. This result is less than "just" and certainly is less than "reasonable and entire."

The courts have generally taken the position that if Congress had intended to include reimbursement of reasonable costs and attorneys' fees within the term "reasonable and entire compensation" it should have said so specifically.

That is what this bill does—it says so specifically. It would authorize expressly the recovery of reasonable costs by an inventor who is forced by statute to litigate against the Government in order to obtain compensation. It would permit the inventor to recover all his reasonable costs—including witnesses' fees and travel costs, attorneys' fees, charges by accountants and other experts, costs of employee time in reviewing records and otherwise preparing for the suit, court costs, and all related expenditures incurred as a result of bringing the lawsuit. The costs

in each case would be scrutinized by the Claims Courts to assure that they were reasonable, of course, but to the extent they were reasonable they could be recovered.

This problem should have been corrected long ago—when it first became apparent that court interpretations would not permit inventors to obtain a complete recovery. To continue this inequity would be a serious disservice to some of our most productive inventors, and to some of our best companies in important industries. We need to be fair with those inventors and companies in order to encourage innovation and make our country more competitive. This bill would help assure the necessary fairness.

By Mr. PRYOR (for himself and Mr. GRASSLEY):

S. 881. A bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes; to the Committee on Finance.

##### CHURCH RETIREMENT BENEFITS SIMPLIFICATION ACT

Mr. PRYOR. Mr. President, I am pleased to introduce today the Church Retirement Benefits Simplification Act of 1995, legislation which I also introduced and held hearings on in the 101st, 102d, and 103d Congresses. This act provides much needed clarification of the rules that apply to church retirement and welfare benefit plans and brings consistency to those rules. In addition, the act resolves significant problems churches face in administering their retirement and welfare benefit programs under current law.

In developing this important legislation, we have worked closely with leaders of the pension boards of 30 mainline Protestant and Jewish denominations and a Catholic religious order. The employee benefit programs of these mainline denominations and order are among the oldest programs in our country. Several date from the 1700's, and their median age is in excess of 50 years. These programs provide retirement and welfare benefits for several hundred thousand clergy and lay workers employed by thousands of churches and church ministry organizations serving the spiritual needs of literally millions of members.

Church retirement benefits programs began in recognition of a denomination's mission to care for its church workers in their advanced years. Several church retirement and welfare benefit programs were initially formed to provide relief and benefits for retired, disabled, or impoverished ministers and families as particular cases of need were identified. As time passed, church denomination began to provide for the retirement needs of their ministers and lay workers on a current and